IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7195 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BANSILAL @ SHERASINH DALCHAND TANK (KALAL)

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA for Petitioner

MR AJ DESAI, ld.AGP for Respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 07/04/2000

ORAL JUDGEMENT

This Special Civil Application is directed against the detention order dated 13th July 1999 passed by the Police Commissioner, Ahmedabad, detaining the petitioner under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985. The grounds of

detention enclosed with the detention order show that a criminal case under Sec.284 of IPC and certain Sections under the Prohibition Act was registered against the petitioner on 4th July 1999 at Bapunagar Police Station and certain articles were also recovered along with 600 ml. of unauthorised liquor. The detaining authority has found that the petitioner is engaged in manufacturing unauthorised liquor and in anti-social activities and that he is a bootlegger. The grounds of detention also refer to two incidents of 18th June 1999 and 25th June 1999 for which the statements of witnesses have been recorded. Against the disclosure of the names of these witnesses, the provisions of Sec.9(2) of the Act have been invoked. The detaining authority has also mentioned that the other alternatives with regard to externment etc. are not sufficient to deter the petitioner from continuing his anti-social activities.

2. The impugned order of detention has been challenged on grounds more than one, but the learned Counsel for the petitioner has pressed that this detention order deserves to be quashed and set aside only on the ground that the order has been passed on the basis of wrong exercise of power under Sec.9(2) of the Act and thereby his right to make a representation under Article 22(5) of the Constitution of India has been adversely affected. In support of this submission, it has been stated that the statements of the witnesses were recorded on 11th July 1999 and 12th July 1999, the proposal was made on 12th July 1999 and the verification of the statements was made by the detaining authority on 13th July 1999 and on the very same day, the order of detention was passed. Reliance has been placed on a decision of this Court in the case of Kalidas v. State reported in 1993(2) GLR 1659 in which the Division Bench of this Court had considered the case of a proposal made on 16th October 1992 and the detention order passed on the next day, i.e. 17th October 1992. The Division Bench had in no uncertain terms observed that it was a wrong exercise of privilege under Sec.9(2) of the Act because the entire bunch of the material was supplied by the sponsoring authority at the time of making the proposal on 16th October 1992 and that had been promptly accepted by the detaining authority and the detention order was passed on the next day, and thus, the right of the petitioner of making an effective representation as enshrined under Article 22(5) of the Constitution of India was adversely affected. The argument of the learned Counsel is that the facts of this case are exactly identical in as much as the proposal was made on 12th July 1999, the statements dated 11th July 1999 and

12th July 1999 were verified on the next day, i.e. 13th July 1999 and on the same day, i.e. 13th July 1999, the detention order was passed. The facts with regard to the date on which the statements of witnesses were recorded, the date on which the verification was made by the detaining authority, the fact that the proposal was made on 12th July 1999 and the detention order was passed on 13th July 1999 have not been disputed by the learned Asstt. Govt. Pleader. This argument of the petitioner's counsel is, therefore fully covered in favour of the petitioner by the Division Bench authority which has been subsequently relied upon and followed in number of other cases. It is, therefore, not necessary to go into the other grounds on which the impugned detention order has been sought to be assailed.

3. The impugned order of detention dated 13th July 1999 passed by the Police Commissioner, Ahmedabad City, therefore, cannot be sustained in eye of law and the same is hereby quashed and set aside. It is directed that the detenu Bansilal @ Sherasinh Dalchand Tank (Kalal) detained in the Jail at Bhuj as a PASA detenu shall be released forthwith, if not required to be detained under any other detention order or in any other criminal case. This Special Civil Application is allowed and the Rule is made absolute. Direct service is permitted.

(M.R. Calla, J.)

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